IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 640 OF 2007

Raju Digamber Suryawanshi ..Petitioner

versus

The State of Maharashtra & Ors. ..Respondents

Shri S. V. Marwadi i/b. Shri V. V. Purwant for the Petitioner.

Shri V. B. Konde Deshmukh, APP for the Respondents - State.

CORAM : R.M.S. KHANDEPARKAR &
SMT. V.K. TAHILRAMANI, JJ.

DATE : 12TH JULY, 2007.

P.C.

1. Heard Advocates so also perused the Affidavit filed by the Respondent No.9 along with the Annexures. The record discloses that in terms of the Order dated 5.4.2007, amount of Rs.5,000/- was already paid by the Respondent No.9 as also the Respondent No.9 had filed the application dated 16.4.2007 before the Additional Chief Metropolitan Magistrate, 40th Court, Girgaum, Mumbai, seeking permission to withdraw the complaint. Apparently, the respondent No. 9 had complied with the

requirements specified under Order dated 5.4.2007 in relation to the withdrawal of the complaint. It is true that in the application filed before the learned Magistrate, the Respondent No.9 had also prayed for withdrawal of the investigation which has been carried out by Malabar Hill Police Station pursuant to the order passed by the Metropolitan Magistrate under Section 156(3) of the Code of Criminal Procedure on the basis of the complaint, and called upon the Senior Inspector of Police, Malbar Hill Police Station to file their say. Undoubtedly, the Magistrate has no jurisdiction to order withdrawal of the investigation once order under section 156(3) of the Code of Criminal Procedure, was passed. Being so, the learned Magistrate could have very well ignored the prayer regarding withdrawal of the investigation and could have disposed of the application for withdrawal of the complaint in view of the Order dated 5.4.2007 passed by this Court in this writ petition. In fact in the said order dated 5.4.2007 it has been clearly recorded that the respondent No. 9 had stated before the court that he wants to withdraw the complaint in question and that the said statement was accepted by the court. Acceptance of the said

statement virtually amounts to quashing of the complaint filed by the respondent No.9. Needless to say, therefore the Magistrate will have to allow the application for withdrawal of the complaint taking into consideration the observations made by this Court in Order dated 5.4.2007; the Magistrate in that regard to do the needful as expeditiously as possible. Liberty to the respondent No. 9 to place the copy of this order before the concerned Magistrate.

2. It does not require further clarification to be made that consequent to the quashing of the complaint, there cannot be any case for the Police Authorities to investigate into the matter on the basis of the complaint, which has already been withdrawn and it is for the police to do the needful bearing in mind the observations made by this Court in the Order dated 5.4.2007. For the reasons stated above therefore notice issued to the respondent No.9 and his Advocate stands withdrawn.

(R.M.S. KHANDEPARKAR, J.)

(SMT. V.K. TAHILRAMANI, J.)